REMARKS

Status of Claims

Claims 1, 3-4, 6, 8-11, 13-18 and 22 are currently pending in the application. With this response, claims 14-18 and 22 have been canceled. Claims 2, 5, 7, 12 and 19-21 have been previously canceled. Claims 1, 3, 4, 6, 8-11 and 13 are rejected.

Claim Rejections under 35 USC § 102

Claims 1, 3, 6, 9, 10 and 13 are rejected under 35 USC 102(b) as being anticipated by Sekiguchi et al. (Japanese Patent No.: 62-122962). The Examiner states that Sekiguchi discloses a container assembly containing all of the limitations of the claims including a flexible membrane 2, a rigid cap 3 having a resilient deformable member 5, and a laminar member that is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member. The Examiner further states that (i) Figure 1 depicts the rigid cap attached to the container with an airspace between the flexible membrane 2 and the rigid cap 3; (ii) the fourth paragraph on page 4 discloses the expansion and contraction of the airspace 4 prevents rupture of the flexible membrane; and (iii) it can be seen that the lowermost point of the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane towards the laminar member. Applicants respectfully disagree, traverse the rejection and request reconsideration.

In order to anticipate under 35 U.S.C. §102(b), a reference must disclose each and every one of the claimed limitations. Sekiguchi et al. do not disclose each and every limitation of the claimed invention.

Applicants agree with the Examiner that Sekiguchi et al. disclose on page 4, paragraph 4 that "the internal pressure of the said air layer and the internal pressure of the glass container are balanced relatively easily thought the expansion and contraction of the air layer present inside airtight space (4) and therefore no particularly great force is applied to inner cap (2) and its heat

seal part and consequently the seal is not broken." Sekiguchi et al. also disclose that the airtight space (4) can be made bigger than that in the sealed container shown in Fig. 1 so that it can withstand larger variations in pressure. Thus contrary to the Examiner's statements, no where does Sekiguchi et al. disclose that the "laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane towards the laminar member." In fact Sekiguchi et al. do not disclose any particular spacing and disclose it can be varied. Moreover the claimed limitation cannot be seen from Figure 1. "Since patent drawings are not drawn to scale one cannot determine any details about the spacing except that a space exists." BPAI Decision, April 23, 2007, page 5, lines 8-11. For this reason alone, Sekiguchi does not anticipate claims 1, 3, 6, 9, 10 and 13.

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 3, 6, 9, 10 and 13 under 35 U.S.C. §102(b) as being anticipated by Sekiguchi et al.

Claim Rejections under 35 U.S.C. 103

1. The Examiner rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Sekiguchi et al. stating that Sekiguchi discloses the claimed container except for the resiliently deformable member comprising a foamed material. The Examiner then concludes that it would have been obvious to one having ordinary skill in the art to form the resiliently deformable member of a foamed material as a matter of obvious design choice. Applicants traverse the rejection and respectfully request reconsideration. As discussed above, Sekiguchi et al. do not disclose the claimed invention and therefore forming the resilient material from foam would not have been obvious to one skilled in the art at the time the invention was made. Withdrawal of the rejection is respectfully requested.

2. The Examiner rejected claim 11 under 35 U.S.C. §103(a) as being unpatentable over Sekiguchi et al. in view of Hardt (U.S. 4,328,905). Applicants traverse the rejection and respectfully request reconsideration. As discussed above, Sekiguchi et al. do not disclose the claimed invention and therefore including a hingedly attached pull tab to the membrane of

Skeiguchi et al. would not have been obvious to one skilled in the art at the time the invention was made. Withdrawal of the rejection is respectfully requested.

3. Claims 1, 3, 4, 6, 8-10 and 13 are rejected under 35 USC 103(a) as being unpatentable over Hiroshi (Japanese Patent No.: 6-219464) in view of Sekiguchi. The Examiner states that Hiroshi discloses all of the claimed limitations except the laminar member being spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member. The Examiner states that Sekiguchi teaches it is known to provide a container assembly wherein the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane toward the laminar member. Thus, the Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Sekiguchi to that of Hiroshi to provide a container liner seal that is less likely to rupture. Applicants respectfully traverse the rejection and request reconsideration.

An important feature of the invention as claimed in claim 1 is that the laminar member is spaced from the flexible membrane by a distance less than the maximum possible extension of the flexible membrane towards the laminar member.

This novel and unobvious feature is particularly adapted for use in the continuous mass production of canned food products in which food is placed within the can in an *uncooked* or *partially cooked* state. Because food cooks in the can, pressure builds up within the can such that there is a higher pressure within the can than outside the can. This pressure differential will tend to cause the membrane (identified by reference numeral 11 in the figures) to extend towards the closure of the container assembly.

As disclosed by Applicants, the stretching of membrane 11 that occurs during the cooking of food products in can 10 is accommodated by expansion of member 11 towards disc 21. Paragraph 0053, US Publication 20020125249. Because the laminar member (identified by reference numeral 21 in the figures) is spaced from the flexible membrane by a distance which is less than the maximum possible extension of the flexible membrane towards the laminar

member, the flexible member will be pre-stressed when the rigid enclosure is in place. This in turn means that the flexible member will always exert pressure on the seal between the flexible member and the container thus reinforcing the seal.

In addition, the stretching of the flexible member, which is limited by the space in between the flexible member and the laminar member, helps to prevent overstretching of the flexible membrane which could lead to failure of the flexible membrane.

In contrast, the Sekiguchi et al. is directed towards a container adapted to heat sterilize the contents of the container rather than to cook the contents of the container. Sekiguchi et al. is particularly directed towards problems associated with the use of *glass* containers and particularly with the problems associated with sealing containers made of glass. Sekiguchi et al. "Prior Art and Problems" pages 2-3.

Sekiguchi is therefore not directed towards overcoming problems associated with withstanding high pressures that are generated from cooking *uncooked* food in the container.

Sekiguchi et al. is attempting to solve a problem that is different than the problem solved by Applicants and Sekiguchi's invention works on a different principle. In particular, as described in the fourth paragraph on page 4 of Sekiguchi et al., Sekiguchi et al. rely on balancing the internal pressure of the air layer formed in the cap with the internal pressure of the glass container. If it is required to withstand higher pressures, then Sekiguchi et al. require that the space 4 in the closure of the container must be made bigger in order to withstand larger variations in pressure. Thus, there is no disclosure in Sekiguchi et al. that the laminar member must be spaced from the flexible member by a distance less than the maximum possible extension of the flexible member towards the laminar member.

As discussed by Applicants above, not only does Sekiguchi et al. fail to disclose such a feature, there is nothing in Figure 1 that shows or suggests what the maximum extension of flexible membrane 2 would be if extended in a direction towards the closure of the container. Since Sekiguchi et al. works on a different principle attempting to solve a different problem, as

set out above, there is nothing to suggest that the flexible membrane 2 would be able to extend as far towards the closure as it has done away from the closure, since Sekiguchi et al. rely on balancing the internal pressure of the air layer in space 4 with the internal pressure of the glass container.

In fact Sekiguchi et al. do not disclose any particular spacing other than it can be varied. The possible variation in spacing disclosed by Sekiguchi et al. cannot be deemed to have made the claimed invention obvious because one skilled in the art would have been choosing among an infinite number of spacing possibilities with no reasonable expectation of success. Applicants claim a very precise limitation that is not suggested or made obvious by Sekiguchi et al. or by Figure 1 of Sekiguchi et al. as suggested by the Examiner. "Since patent drawings are not drawn to scale one cannot determine any details about the spacing except that a space exists." BPAI Decision, April 23, 2007, page 5, lines 8-11. Thus based on the disclosure of Sekiguchi et al., one of ordinary skill in the art would not be motivated to modify Hiroshi to provide a laminar member is spaced from the flexible member by a distance less than the maximum possible extension of the flexible member towards the laminar member.

Applicants acknowledge that the "mere existence of differences between the prior art and an invention does not establish the invention's nonobviousness. *Dann v. Johnston*, 425 U.S> 219, 230, 189 USPQ 257, 261 (1976). However, if the gap between the prior art and the claimed invention is great the claimed invention cannot be deemed to be obvious. *Id.* Applicants contend that they have achieved unexpected results in preventing failure of the flexible membrane that could result in contamination of food by providing a laminar member is spaced from the flexible member by a distance less than the maximum possible extension of the flexible member towards the laminar member and that these unexpected results are not obvious over any of the art or record or any theoretical combination based on Hiroshi and Sekiguchi et al. Withdrawal of the rejection is respectfully requested.

Further because the dependent claims depend from an allowable base claim, they too distinguish over the art of record and are allowable.

CONCLUSION

Applicants respectfully submit that with the arguments and amendments presented herein all pending claims are allowable over the art of record, for at least the reasons discussed above, and respectfully request that a Notice of Allowance with respect to all pending claims be issued in this case. If the Examiner believes that a teleconference would be of value in expediting the allowance of the pending claims, the undersigned can be reached at the telephone number listed below. This response is being filed within the three-month statutory period, which expires on November 16, 2007 and thus it is believed that no extension fees are required. If the Office determines that fees are required for filing this response, the Applicant authorizes the Commissioner to charge any such fees to Deposit Account No. 50-1901 (Reference No. 350013-65).

Dated: October 31, 2007

Respectfully submitted,

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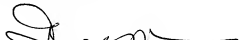
By 

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